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IN THE UNITED STATES DISTRICT COURT

7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 JORGE L. MARRERO, No. C 17-3458 WHA (PR)
10 Plaintiff, **ORDER OF SERVICE;
INSTRUCTIONS TO CLERK**

12 S. PATTERSON; SALAZAR; LUNA;
13 SERGEANT KENMORE;
14 SERGEANT HERRERO;
15 LIEUTENANT DELAROSA;
16 LIEUTENANT PENA;
17 LIEUTENANT RODRIGAZ;
18 LIEUTENANT KAHN; CAPTAIN
19 METCALF; CAPTAIN AGUILAR;
20 NURSE SALAZAR; ASSISTANT
21 WARDEN HOFFMAN; AND
22 WARDEN HATTON.

18 Defendants.

20 | INTRODUCTION

21 Plaintiff, an inmate at Pelican Bay State Prison, filed this civil rights case under 42
22 U.S.C. 1983 alleging that Defendants — who all work at the California Training Facility
23 (“CTF”) in Soledad, California, where plaintiff was formerly housed — violated his
24 constitutional rights. He is granted leave to proceed in forma pauperis in a separate order. For
25 the reasons discussed below, the complaint is ordered served upon defendants.

ANALYSIS

27 || A. STANDARD OF REVIEW

²⁸ Federal courts must engage in a preliminary screening of cases in which prisoners seek

1 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
2 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims
3 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek
4 monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro
5 se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699
6 (9th Cir. 1990).

7 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the
8 claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the
9 statement need only ""give the defendant fair notice of what the . . . claim is and the grounds
10 upon which it rests."" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted).
11 Although in order to state a claim a complaint "does not need detailed factual allegations, . . . a
12 plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to relief' requires more than
13 labels and conclusions, and a formulaic recitation of the elements of a cause of action will not
14 do. . . . Factual allegations must be enough to raise a right to relief above the speculative
15 level." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A
16 complaint must proffer "enough facts to state a claim for relief that is plausible on its face." *Id.*
17 at 1974.

18 To state a claim under 42 U.S.C. 1983, a plaintiff must allege two essential elements:
19 (1) that a right secured by the Constitution or laws of the United States was violated, and (2)
20 that the alleged deprivation was committed by a person acting under the color of state law.
21 *West v. Atkins*, 487 U.S. 42, 48 (1988).

22 **B. LEGAL CLAIMS**

23 Plaintiff alleges that defendants subjected him to unsanitary and painful conditions at
24 CTF for 72 hours under a program called "Contraband Savings Watch" ("CSW") for the
25 penologically unnecessary purpose of looking for an item that defendant Patterson had falsely
26 accused Plaintiff of swallowing. He also alleges that he was injured and did not receive proper
27 medical care. When liberally construed, these allegations claims state cognizable claims for the
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1 violation of his rights to due process and to be free from cruel and unusual punishment under the
2 Fourteenth and Eighth Amendments, respectively..

3 **CONCLUSION**

4 For the reasons set out above, it is hereby ordered as follows:

5 1. The clerk shall issue summons and the United States Marshal shall serve, without
6 prepayment of fees, a copy of the complaint with all attachments thereto, and a copy of this
7 order upon defendants **Correctional Officer S. Patterson; Correctional Officer Salazar;**
8 **Correctional Officer Luna; Sergeant Kenmore; Sergeant Herrero; Lieutenant DeLaRosa;**
9 **Lieutenant Pena; Lieutenant Rodrigaz; Lieutenant Kahn; Captain Metcalf; Captain**
10 **Aguilar; Nurse Salazar; Assistant Warden Hoffman; and Warden Hatton** at the
11 **Correctional Training Facility in Soledad, California.** A courtesy copy of the complaint with
12 attachments and this order shall also be mailed to the California Attorney General's Office.

13 2. Defendant **shall** file an answer in accordance with the Federal Rules of Civil
14 Procedure.

15 3. In order to expedite the resolution of this case:

16 a. No later than **91 days** from the date this order is filed, defendant shall file a
17 motion for summary judgment or other dispositive motion. If defendant is of the opinion that
18 this case cannot be resolved by summary judgment, he shall so inform the court prior to the date
19 the summary judgment motion is due. All papers filed with the court shall be promptly served
20 on the plaintiff.

21 b. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the
22 court and served upon defendant no later than **28 days** from the date of service of the motion.
23 Plaintiff must read the attached page headed "NOTICE -- WARNING," which is provided to
24 him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc), and
25 *Klingele v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

26 c. Defendant **shall** file a reply brief no later than **14 days** after the date of
27 service of the opposition.

IT IS SO ORDERED.

Dated: September 2, 2017.


WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

NOTICE -- WARNING (SUMMARY JUDGMENT)

If defendants move for summary judgment, they are seeking to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

5 Rule 56 tells you what you must do in order to oppose a motion for summary judgment.
6 Generally, summary judgment must be granted when there is no genuine issue of material
7 fact--that is, if there is no real dispute about any fact that would affect the result of your case,
8 the party who asked for summary judgment is entitled to judgment as a matter of law, which
9 will end your case. When a party you are suing makes a motion for summary judgment that is
10 properly supported by declarations (or other sworn testimony), you cannot simply rely on what
11 your complaint says. Instead, you must set out specific facts in declarations, depositions,
12 answers to interrogatories, or authenticated documents, as provided in [current Rule 56(c)], that
13 contradict the facts shown in the defendant's declarations and documents and show that there is
14 a genuine issue of material fact for trial. If you do not submit your own evidence in opposition,
15 summary judgment, if appropriate, may be entered against you. If summary judgment is
16 granted, your case will be dismissed and there will be no trial.